Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket No. 01-235
	)	
Newspaper/Radio Cross-Ownership Wavier Policy	)	MM Docket No. 96-197

COMMENTS ON ORDER AND NOTICE OF PROPOSED RULE MAKING

Pathfinder Communications Corp. ("Pathfinder") hereby submits its Comments pursuant to Section 1.415 of the Commission's rules in response to the Order and Notice of Proposed Rule Making adopted by the Commission on September 13, 2001 (the "NPRM") in the above-referenced proceedings, in which the Commission has requested comment on revisions to the newspaper/broadcast cross-ownership rule set forth in Section 73.3555(d) of the Commission's Rules.

I. INTRODUCTION.

The newspaper/broadcast cross-ownership rule, once believed necessary to ensure that a diversity of viewpoints was accessible to the public, has outlasted its utility. The development and remarkable expansion of the number and types of media outlets now available to the public was unimaginable when the rule was originally promulgated in 1975. In light of these new realities, the newspaper/broadcast cross-ownership rule should be rescinded to reflect these sweeping changes in the media marketplace and the diversity of viewpoints they have fostered.

Alternatively, if the Commission decides to retain the newspaper/broadcast cross-ownership rule, it should restrict its application to the combined ownership of television stations and daily newspapers. Even if television/newspaper combinations arguably merit heightened concern for preserving a diversity of viewpoints in the marketplace, there is no similar concern respecting the common ownership of newspapers and radio stations.

If the Commission elects to retain the rule and does not limit its scope to television/newspaper combinations, at the very least, the rule should be modified to accurately reflect the "market" in which newspapers and FM radio stations compete. As currently formulated, the newspaper/broadcast cross-ownership rule prohibits the common ownership of a newspaper and an FM radio station where that FM station's 1 mV/m (or 60 dBu) contour encompasses the entire community where the newspaper is published.[1] As described in more detail below, the 1 mV/m contour standard is inappropriate for purposes of this rule, as it does not accurately define the relevant "market." Instead, the "market" for purposes of this rule should be defined by the predicted 3.16 mV/m (or 70 dBu) contour of the applicable FM station, and the restriction should apply only where that more powerful contour encompasses the entire community in which the newspaper is published.

II. THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE SHOULD BE RESCINDED AS IT IS NO LONGER NECESSARY TO PROTECT THE PUBLIC INTEREST BECAUSE OF THE PROLIFERATION AND DIVERSITY OF OTHER MEDIA OUTLETS.

The newspaper/broadcast cross-ownership rule is now obsolete. As the Commission notes in the NPRM, the media world has changed significantly since the newspaper/broadcast cross-ownership rule was adopted. Between 1975 and 2001, there has been a 166% increase in the number of licensed radio stations in the United States, while the number

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[1] *See* 47 C.F.R. § 73.3555(d)(2) (2000).

of U.S. television stations has grown from 952 to 1,678 full power stations, 2,396 low power stations and 232 Class A stations. During the same period, the number of national commercial broadcast networks has grown from three to seven. Although the number of daily newspapers has declined by 19% during that period, circulation of smaller, weekly newspapers has doubled. Coverage of cable television systems has expanded significantly from 13% of TV households to 67%, while multichannel programming distributors, such as direct broadcast satellite providers, have emerged. Finally, the recent invention and remarkable expansion of the Internet cannot be underestimated as an alternative media resource.

As these figures show, the public has access to a much wider variety of media outlets than ever before. Consumers now have a previously unimagined range of choices from which to obtain news and information on both local and national issues. Indeed, the emergence of the Internet permits any author or group to express their viewpoint, no matter how extreme or diverse it may be, and to be seen and heard by anyone and everyone, with only the slightest barriers to entry. There is no indication that this continued diversification of sources and viewpoints will cease.

Because of this ever-widening range of media outlets, the newspaper/broadcast cross-ownership is outmoded. Although broadcast and newspaper outlets still provide news coverage and other information, the public is no longer solely dependent upon those sources. Restrictions on dual ownership of broadcast stations and newspapers are no longer necessary to ensure a diversity of viewpoints.

Equally important, the newspaper/broadcast cross-ownership rule inhibits competition. This is especially pronounced in smaller markets. Without the ability to use economies of scale, resources available to local news reporting in smaller markets are often limited because, among other things, an owner of a newspaper cannot utilize the additional resources of a commonly owned broadcast station, and vice versa. Ultimately, the continued enforcement of this rule hurts the public. Therefore, the public interest would best be served by the repeal of the newspaper/broadcast cross-ownership rule.

III. <u>IF RETAINED, THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP SHOULD ONLY RESTRICT TELEVISION/NEWSPAPER COMBINATIONS</u>.

If the Commission decides not to abolish the newspaper/broadcast cross-ownership rule, Pathfinder urges that the Commission restrict the rule's application to combinations of television stations and daily newspapers.

The public relies heavily upon television as a primary source for obtaining news and information.[2] By contrast, radio has generally evolved into an entertainment medium. Penetration of the alternative media outlets described above may further diminish the role of radio stations as a news source in the future. Therefore, while cross-ownership restrictions may serve some purpose for combinations of television stations and daily newspapers because of the prominent role of television as a source of news and information, they no longer serve that purpose for pairings of daily newspapers and radio stations.

Further, as the Commission notes in the NPRM, there are almost eight times as many radio stations in the United States as there are full power television stations. Because of their limited numbers, in some cases, the ownership of television stations is more concentrated than radio stations in a given market. As a result, there is less diversity of voices and viewpoints

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[2] *See Report and Order, Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, MM Docket Nos. 91-221, 87-8, 14 FCC Rcd 12903 (1999) at ¶ 18; *Memorandum Opinion and Second Order on Reconsideration, Review of the Commission's Regulations Governing Television Broadcasting; Television Satellite Stations Review of Policy and Rules*, MM Docket Nos. 91-221, 87-8, 16 FCC Rcd 1067 (2001) at ¶ 22.

in television than radio. For example, in South Bend, Indiana, a market where Pathfinder holds media interests, there are 6 television voices in the South Bend-Elkhart DMA,[3] compared with 9 independent radio voices in the South Bend Arbitron market.[4] Because the concentration of independent voices may be more pronounced for television ownership, the restrictions on newspaper/television combinations may preserve a diversity of viewpoints in a market, whereas those concerns for diversity are less significant for combinations of radio stations and daily newspapers.

Therefore, if it retains the newspaper/broadcast cross-ownership rule at all, the Commission should limit the applicability of the rule to television/newspaper combinations, since cross-ownership of radio stations and daily newspapers does not raise significant public interest concerns.

IV. THE STANDARD FOR CONTOUR OVERLAP DETERMINATIONS UNDER THE NEWSPAPER/BROADCAST CROSS-OWNERSHIP RULE SHOULD BE MODIFIED FOR NEWSPAPER/FM RADIO BROADCAST STATION COMBINATIONS.

If the Commission determines that maintaining the newspaper/broadcast cross-ownership rule is necessary and does not limit the scope of its application to television/newspaper combinations, Pathfinder urges that the Commission revise its methodology for evaluating market overlap to more accurately assess whether a newspaper and an FM station compete in the same market. Currently, the newspaper/broadcast cross-ownership rule prohibits the combined ownership of a daily newspaper and an FM radio broadcast station where the predicted 1mV/m (or 60 dBu) contour of the FM station encompasses the entire

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3 *See* Investing in Television Market Report 2000, 4th Edition, BIA Research, Inc.

4 *See* Investing in Radio Market Report 2001, 1st Edition, BIA Research, Inc.

community where the newspaper is published.[5] Pathfinder asserts that an FM radio station's predicted 3.16 mV/m (or 70 dBu) contour is the more appropriate standard, as it is the best measure of the geographic market truly served by an FM station. A standard based on the predicted 3.16 mV/m countour can best establish whether that station competes with a daily newspaper, and thus, where concerns over viewpoint diversity are appropriate.

The existing benchmark of the predicted 1mV/m contour of an FM station is, by definition, inferior, and therefore inappropriate for the purposes of the newspaper/broadcast cross-ownership rule. The Commission's own rules make this clear. Those rules require that the transmitter of an FM radio station provide a minimum field strength to its entire community of license to ensure that the station's community of license is properly served and signal coverage is adequate. This area of coverage is defined by the station's predicted 3.16 mV/m contour.[6] It is therefore inconsistent that the Commission would require an FM radio station to provide a minimum field strength to its "market" for the purpose of locating its transmitter, but the same station's "market" would be much larger, while providing a weaker, inferior signal for the purposes of the newspaper/broadcast cross-ownership rule. Ensuring that the market is properly served by a strong signal and providing a diversity of viewpoints in the market are equally important goals for the Commission. The market definition for both purposes should be equal too.

As an illustration of the anomalous outcomes produced by the current rules, Truth Publishing Company, Inc., a corporation under common control with Pathfinder, owns The Elkhart Truth, a daily newspaper published in Elkhart, Indiana with a circulation of about 30,000. The nearest Arbitron-rated market is the South Bend, Indiana market. The city of

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5 *See* 47 C.F.R. § 73.3555(d)(2) (2000).

6 *See* 47 C.F.R. § 73.315(a) (2000).

Elkhart is encompassed by the predicted 1 mV/m contour of a number of South Bend, Indiana FM radio stations, but is not within their predicted 3.16 mV/m contours. Likewise, of The Elkhart Truth's circulation of 30,000, only approximately 700 copies are sold daily in St. Joseph county, the county where South Bend is located. At the same time, South Bend has its own daily newspaper, the South Bend Tribune. This is an instance where a daily newspaper and a number of FM stations are really in different markets, yet under the current newspaper/broadcast cross-ownership rule, combined ownership of The Elkhart Truth and one of those South Bend radio stations would be prohibited.[7] There is no reason not to permit an owner of an FM radio station to also own a daily newspaper that is on the periphery of its market, such as The Elkhart Truth is vis-à-vis South Bend, Indiana. Revising the benchmark for determining an FM radio station's market to the predicted 3.16 mV/m contour would preserve diversity of viewpoints in a single market, yet would not inhibit the combined ownership of an FM station and a daily newspaper where they are truly in different markets.

In an analogous situation, the newspaper/broadcast cross-ownership rule for television stations designates the appropriate geographic area by the Grade A contour of the television station, and not by the weaker, and thus inferior, Grade B contour.[8] It should be noted that this designation of the appropriate market by the stronger Grade A signal is applied in the context of cross-ownership of television stations and newspapers, an area where the Commission has a higher level of concern regarding viewpoint diversity because there are fewer television stations in any given market.

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[7] Pathfinder also owns radio stations in the South Bend, Indiana market, but the cross-ownership of those stations and The Elkhart Truth is grandfathered under the newspaper/broadcast cross-ownership rule.

[8] *See* 47 C.F.R. § 73.3555(b)(3) (2000).

Basic economic theory supports these proposed changes. Economies of scale promote competition and aid in the wider dissemination of viewpoints and information. This is especially true in smaller, less urban markets. The combination of a small, local newspaper and an FM radio station located in separate, but geographically proximate, markets would permit both outlets to increase efficiencies. This, in turn, would lead to a more robust distribution of news and information, as resources that previously served duplicative uses would become available. These synergies would also enable cost-savings, which are particularly important in smaller markets. Such cost savings would release resources that could then be used by the newspaper and the radio station to benefit the public. Finally, as stated earlier, of all the media outlets, only the number of daily newspapers has declined over the past twenty-five years. Relaxing or eliminating the newspaper/broadcast cross-ownership rule may allow more daily newspapers to remain profitable, especially in smaller, less urban markets, and thereby, ensure a vibrant, competitive market in newspaper journalism.

For all of these reasons, the newspaper/broadcast cross-ownership rule should determine the market where an FM radio station and a daily newspaper compete by the predicted 3.16 mV/m contour of the FM station.

V. CONCLUSION.

The newspaper/broadcast cross-ownership rule, once considered by some to be a necessary tool to preserve a diversity of viewpoints in media outlets, no longer serves those purposes. The number of broadcast stations has increased dramatically, while new forms of media outlets have emerged. The sheer volume of these sources ensures that a diversity of viewpoints will remain in any given market. Therefore, the Commission should rescind the newspaper/broadcast cross-ownership rule entirely.

Alternatively, if the newspaper/broadcast cross-ownership rule is retained, the Commission should limit the application of the rule to television/newspaper combinations, because only these combinations, arguably, raise a compelling interest in maintaining a diversity of viewpoints in a market. Television remains the principal source for news and information, while radio has instead become primarily a medium for entertainment. Equally important, in some cases, ownership of television stations may be more concentrated than radio stations in any given market. As a result, the newspaper/broadcast cross-ownership rule should only restrict television/newspaper combinations.

If the Commission does not eliminate the rule or limit its scope to newspaper/television combinations, at a minimum, the market in which newspapers and FM radio stations compete should be redefined, which is best represented by the predicted 3.16 mV/m contour of the FM station. Where this contour overlaps with the entire community of publication of a daily newspaper, the revised newspaper/broadcast cross-ownership rule would preserve a diversity of viewpoints. However, where the predicted 3.16 mV/m contour of the FM radio station does not overlap the newspaper's entire community of publication, the FM station and the newspaper are properly viewed as serving different markets, and therefore, their common ownership should not be prohibited. Redefining this methodology would spur competition, and in some cases, would promote viewpoint diversity by aiding daily newspapers in smaller markets, where without these changes, they may not remain in existence.

For all of these reasons, the Commission should eliminate the newspaper/broadcast cross-ownership rule, apply it only to television/newspaper combinations, or at the very least, revise the methodology to utilize the FM radio station's predicted 3.16 mV/m contour for determining whether an FM radio station and a daily newspaper compete in the same market.

Respectfully submitted,

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